

1 DALE WILLS  
2 C.D.C. No. J-16405  
3 P.O. Box 5246  
4 Corcoran, CA 93212-5246  
5 IN PRO SE

FILED

2007 NOV 13 PM 3:18

RENEE W. WICKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

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8 UNITED STATES DISTRICT COURT  
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10  
11 DALE WILLS,  
12 Petitioner,  
13 v.  
14 JAMES TILTON, et al.,  
15 Respondents.

Case No. C-07-3354 CW (PR)  
PETITIONER'S MOTION FOR  
ORDER TO SHOW CAUSE re:  
COERCIVE CIVIL CONTEMPT  
SANCTIONS FOR OBSTRUCTION  
OF JUSTICE

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18 TO THE ATTORNEY(S) FOR RESPONDENTS AND RESPONDENTS  
19 AND THE ABOVE ENTITLED COURT:

20 PETITIONER DALE WILLS ("Moving Petitioner") on behalf  
21 of himself and pursuant to any and all applicable provisions of  
22 law hereby moves the Court to issue an order requiring Respondents  
23 to show cause, if any cause exists, why coercive civil contempt  
24 sanctions, consisting of a per diem fine, should not be issued  
25 on the grounds that Respondents' refusal to allow Moving Petitioner  
26 access to the law library constitutes an obstruction of justice to  
27 harass and obstruct Moving Petitioner from prosecuting this habeas  
28 proceeding and from preparing, serving, and filing a meritorious

1 opposition to their motion to dismiss.

2 Moving Petitioner further moves the Court to issue an order  
3 staying disposition of Respondents' Motion to Dismiss pending  
4 disposition of this motion.

5 Moving Petitioner further moves the Court to refer this  
6 matter to the United States Attorneys Office for possible criminal  
7 prosecution.

8 This motion is based on the following memorandum of points  
9 and authorities and all papers on file in this action

## 10 MEMORANDUM OF POINTS AND AUTHORITIES

### 11 INTRODUCTION

12 A reading of the following will affirmatively establish  
13 that Respondents' refusal to allow Moving Petitioner access to the  
14 law library constitutes an obstruction of justice. This motion  
15 should be GRANTED.

### 16 STATEMENT OF FACTS

17 On November 6, 2007, Petitioner transcribed and authored  
18 a California Department of Corrections and Rehabilitation-602  
19 ("CDCR") Inmate / Parolee Appeal Form ("Wills I Appeal"), a true  
20 and correct copy of which is attached hereto as Exhibit "A." Moving  
21 Petitioner submitted the Wills I Appeal directly to law library  
22 staff for response. Moving Petitioner complained that despite  
23 two (2) requests for law library access, he has not been called to  
24 the law library. Moving Petitioner needs access to the law library  
25 for two (2) reasons. First, Moving Petitioner needs to conduct  
26 legal research as to whether his counsels' actions constitute "state  
27 action." Second, after completing the necessary legal research  
28 and hence completion of opposing papers, Moving Petitioner

1 would need access to make photocopies of his opposing papers,

2 On November 8, 2007, law library staff provided a written  
3 response. See Exhibit "A," section C. The law library staff  
4 denied the Wills I Appeal stating:

5 "Per the Governing Authority<sup>1</sup>, whites are on  
6 lockdown. Thus for safety and security issues you  
7 must use the paging system; when you come off  
8 lockdown please submit a I/M Request for each  
9 time you need to come to library."

10 See Exhibit "A," section C. (brackets added).

### 11 VERIFICATION

12 I, the undersigned, declare under penalty of perjury under  
13 any and all applicable laws that the foregoing statement of facts  
14 are true and correct of my own personal knowledge and if called as  
15 a witness to testify to any of these facts I could do so competently.

16 DATED: Nov. 8, 2007

17 By: Dale Wills  
18 DALE WILLS

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<sup>1</sup> Respondents are the "Governing Authority."

## ARGUMENT

18 United States Code section 401 sets forth the circumstances for the imposition of civil and/or criminal contempt sanctions:

"A court of the United States shall have the power to punish by fine or imprisonment, at its discretion, such contempt of its authority, and none other as:

- (1) Misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice;
- (2) Misbehavior of any of its officers in their official transactions;
- (3) Disobedience or resistance to its lawful writ, process, order, rule, decree, or command."

See 18 U.S.C. § 401 (1)-(3).

In the present case, Moving Petitioner maintains that Respondents' refusal to allow him access to the law library constitutes a violation of subsection 1 in that without access to the law library, Moving Petitioner is actually incapable of preparing, serving and filing papers in opposition to Respondents' Motion to Dismiss. Moving Petitioner needs to conduct minimal legal research into whether his counsels' actions constitute "state action." See ante at p. 2, lines 25-27. Respondents have asserted that it does not. See Respondents' Motion to Dismiss ("RMD"), p. 13, lines 15-21. However, sometime in the past, Moving Petitioner recalls hearing about a U.S. Supreme Court opinion wherein it discusses how an inmate's attorney constitutes "state action." This case involved an inmate's attempt to sue his attorney under 42 U.S.C. § 1983. The opinion concluded that the attorney was a "state action," and that he might have rendered IAC. But the only reason the suit failed was because the attorney was the

1 advocate ??? Moving Petitioner is uncertain of the existence of  
 2 such a case but absent access to the law library, he is incapable of  
 3 even researching this issue. In addition, Moving Petitioner would  
 4 need access to make photocopies as well. See ante at p. 2, lines  
 5 27-28, p. 3, lines 1. But Respondents' refusal to allow Moving  
 6 Petitioner access to the law library, see Exhibit "A," section C,  
 7 is an attempt to cause Moving Petitioner's opposition to be  
 8 unavailable for use in an official proceeding. It is an obstruction  
 9 of justice to "conceal an object with the intent to impair the  
 10 objects... availability for use in an official proceeding."  
 11 See United States v. Kellington, 217 F.3d 1084, 1098  
 12 (9th Cir. 2000) (quoting 18 U.S.C. § 1512 (b)(2)(B)). CF. Allen  
 13 v. Sakai, 48 F.3d 1082, 1089 (9th Cir. 1994) (it does not take  
 14 sophisticated "legal scholarship" to know that a plaintiff's  
 15 access to the courts could be hindered seriously by an inability to  
 16 multiple, accurate copies of legal documents); Gluth v. Kangas,  
 17 951 F.2d 1504, 1510 (9th Cir. 1991) (litigation necessarily  
 18 requires some means of accurate duplication because the courts  
 19 and the parties need to refer to the same documents). It is not  
 20 necessary to show that the defendant actually obstructed justice.  
 21 See United States v. Willard, 230 F.3d 1093, 1095 (9th Cir.  
 22 2000). The statutory focus is on the defendant's endeavor. See  
 23 id.

24 What's more, Respondents' refusal to allow Moving  
 25 Petitioner access to the law library constitutes an additional  
 26 delay in the expeditious disposition of this habeas proceeding.  
 27 Respondents have already delayed these proceedings just by  
 28 submitting their motion to dismiss. It would seem that

1 Respondents' counsel has abandoned their sworn duty to see that  
2 "justice shall be done." See e.g., Berger v. United States, 295  
3 U. S. 78, 88 (1935).

4 Clearly, Respondents' actions constitute an obstruction of  
5 justice.

#### 6 CONCLUSION

7 Accordingly, the foregoing facts and argument establish that  
8 Respondents' refusal to allow Moving Petitioner access to the law  
9 library constitutes an obstruction of justice justifying the  
10 imposition of coercive civil contempt sanctions.

11 WHEREFORE, Moving Petitioner prays for this Court to issue  
12 an order requiring Respondents to show cause, if any cause exists,  
13 why a per diem fine, in an amount determined by the Court, should  
14 not be imposed until such time as Moving Petitioner is allowed access  
15 to the law library for two (2) hours one day, and fifteen (15)  
16 minutes the next day.

17 DATED: Nov. 8, 2007

18 Respectfully Submitted,

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20 By: Dale Wills  
21 DALE WILLS  
22 Petitioner In Pro Se  
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**EXHIBIT A**

STATE OF CALIFORNIA

DEPARTMENT OF CORRECTIONS

**INMATE/PAROLEE  
APPEAL FORM**  
 CDC 902 (12/97)

Location: Institution/Parole Region

Log No.

Category

1. \_\_\_\_\_

1. \_\_\_\_\_

2. \_\_\_\_\_

2. \_\_\_\_\_

You may appeal any policy, action or decision which has a significant adverse effect upon you. With the exception of Serious CDC 115s, classification committee actions, and classification and staff representative decisions, you must first informally seek relief through discussion with the appropriate staff member, who will sign your form and state what action was taken. If you are not then satisfied, you may send your appeal with all the supporting documents and not more than one additional page of comments to the Appeals Coordinator within 15 days of the action taken. No reprisals will be taken for using the appeals procedure responsibly.

NAME <u>Wills, Dale G.</u>	NUMBER <u>J-16405</u>	ASSIGNMENT <u>Recreation Coordinator</u>	UNIT/ROOM NUMBER <u>C-5-225</u>
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A. Describe Problem: Appellant has a deadline of Nov. 19, 2007, to which to file papers in opposition to a motion to dismiss in a habeas corpus proceeding, Wills v. Terhune, C-07-3354 CW (PR), U.S. Dist. Ct., Northern District of Cal. Appellant has submitted two (2) PLU requests in the past two (2) weeks but has not yet been allowed access to the law library.

If you need more space, attach one additional sheet.

B. Action Requested: That Appellant be allowed access to the law library on Nov. 9, 2007, to conduct the necessary legal research and Nov. 9, 2007, to make photocopies of the legal papers.

Inmate/Parolee Signature: Dale Wills Date Submitted: Nov. 6, 2007

C. INFORMAL LEVEL (Date Received: 11-8-07)

Staff Response: DENIED. PER THE GOVERNING AUTHORITY, WHITES ARE ON LOCKDOWN, THUS FOR SAFETY AND SECURITY ISSUES YOU MUST USE THE PAGING SYSTEM. WHEN YOU COME OFF LOCKDOWN PLEASE SUBMIT A I/M REQUEST FOR THE TIME YOU NEED TO COME TO LIBRARY.

Staff Signature: David Date Returned to Inmate: 11-8-07

**D. FORMAL LEVEL**

If you are dissatisfied, explain below, attach supporting documents (Completed CDC 115, Investigator's Report, Classification chrono, CDC 128, etc.) and submit to the Institution/Parole Region Appeals Coordinator for processing within 15 days of receipt of response.

Signature: \_\_\_\_\_ Date Submitted: \_\_\_\_\_

Note: Property/Funds appeals must be accompanied by a completed Board of Control form BC-1E, Inmate Claim

CDC Appeal Number: \_\_\_\_\_



Dear Clerk,

Nov 8, 2007

As is more clearly understood by a reading of the accompanying motion, I am unable to provide copies of the motion, nor able to serve a copy of the same on Respondents. In fact, I don't even have a copy for my own records. I would, therefore, ask this time to be excused from providing copies and that an "endorsed-filed" copy be returned to me at Respondents' expense. THANK YOU!!!

Sincerely,

Dale Wells

DALE WELLS  
Petitioner In Pro Se